

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

FRESENIUS MEDICAL CARE
HOLDINGS, INC., a New York corporation;
and FRESENIUS USA, INC., a
Massachusetts corporation,

Plaintiffs and Counter-

Defendants,

v.

BAXTER INTERNATIONAL, INC., a
Delaware corporation; and BAXTER
HEALTHCARE CORPORATION, a
Delaware corporation,

Defendants and

Counterclaimants.

Case No. C 03-01431 PJH

[PROPOSED] FINAL JUDGMENT

This case is before the Court on remand from the United States Court of Appeals for the Federal Circuit following its decision in *Fresenius USA, Inc. v. Baxter International, Inc.* 532 F.3d 1288 (Fed. Cir. 2009). On remand, Plaintiffs Fresenius Medical Care Holdings, Inc. and Fresenius USA, Inc. (“Fresenius”), and defendants Baxter International, Inc. and Baxter Healthcare Corporation (“Baxter”), filed certain motions. Fresenius filed a motion to stay the remand proceedings (Docket No. 1044), as well as a motion for a new damages trial (Docket No. 1042). Baxter filed a motion for immediate enforcement (Docket No. 1113), as well as a motion for decision on limited remand issues (Docket Nos. 1048, 1100). The Court denied Fresenius’ motion to stay and also denied Fresenius’ motion for a new damages trial (*See* Docket No. 1095). The Court denied Baxter’s motion for immediate enforcement as premature. (Docket No. 1117). The Court granted-in-part Baxter’s motion

1 for decision on limited remand issues (Docket No. 1134). The Court having now ruled on all motions
 2 filed by the parties on remand, IT IS HERBY ORDERED that:

3 1. Fresenius is liable to Baxter in the amount of \$14,266,000.00 as set forth in the jury's verdict
 4 (Docket No. 962) and the Final Judgment on the jury's verdict (Docket No. 965), plus pre-judgment
 5 interest calculated in accordance with the Court's prior Order (Docket 1018), costs as set forth in
 6 Docket No. 1026, post-judgment interest accumulated since November 7, 2007; and any costs that may
 7 be pursued in a supplemental bill of costs submitted by Baxter in accordance with Civil L.R. 54-1;

8 2. Fresenius is liable to Baxter in the amount of \$9,305,254.98 for post-verdict royalties on
 9 2008K hemodialysis machines sold during the Transition Period, plus future post-judgment interest.
 10 Fresenius is also liable to Baxter for .007% of the sales price of 2008K disposables sold between
 11 November 7, 2007 and April 13, 2011, plus future post-judgment interest; and

12 3. Prior to remand, the Court ordered Fresenius to pay into an escrow monies to secure Fresenius'
 13 payments of post-verdict royalties. Following the Court's Order on remand relating to post-verdict
 14 royalties (Docket No. 1134), the escrow is currently over-funded. Accordingly, Fresenius shall leave
 15 \$10 million in the escrow as security for post-verdict royalties. The parties shall execute whatever
 16 documentation is required to secure the return to Fresenius of any amounts in the escrow in excess of
 17 \$10 million.

18 IT IS SO ORDERED.

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 20 DATED: March 16, 2012

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HON. P. J. HAMILTON
 U.S. District Judge
 Southern District of California

